

WHEN SOME ADVOCATES HOLD YOU TO RANSOM

A majority of the consumers who hire the service of an advocate to deal their cases, particularly in the consumer forum, have found that they are left high and dry because of the negligence and carelessness of the advocate. Even after charging hefty fees advocates do not appear before the forum in time, do not do their homework well and fail to protect the interests of their clients. There are instances wherein consumers are denied no-objection certificates and are not allowed to hire the service of another advocate. In a way, like traders, some advocates are taking consumers for a ride.

For consumers who want to proceed against errant advocates, the Consumer Protection Act (CPA) will be an effective tool. In a recent case, the Andhra Pradesh High Court decided that when a person engages a legal practitioner for extending professional assistance on legal matters on payment of a fee, he avails of the professional service for a consideration and, therefore, the provisions of the CPA come into play.

In this case, a consumer had hired the services of an advocate over a rent control issue. The advocate failed to render proper service in getting the order of the rent controller implemented. The consumer wanted back the case papers and a no-objection certificate so that he could approach another advocate or argue the case himself. When this was not forthcoming, he filed a complaint in the consumer forum which went up to National Commission and the Andhra Pradesh High Court. The point involved was whether advocates were covered under CPA.

Right from the day CPA was enacted, legal professionals have been arguing that they are not covered under the CPA. Sometime back, a group of advocates had filed a petition in the Madras High Court asking it to declare Section 3 of the CPA unconstitutional. This section says that the provision of CPA shall be in addition to and not in derogation of the provisions of any other law.

However, both these arguments were overruled by the Madras High Court. It declared that if Section 3 was declared unconstitutional, no person could institute any proceeding before the consumer forums. Further, it said that even if section 3 was declared unconstitutional, advocates cannot escape from the CPA for the reason that the word 'service' as defined in the CPA includes all services hired by consumers.

Now, the Andhra Pradesh High Court has taken a similar view. Relying on the decision of the Supreme Court in the case of Indian Medical Association and the Madras High Court decisions, the AP High Court has said that the word 'service' as used in the CPA is wide enough to cover legal services like medical service. It has said that if an advocate breaches an obligation to be honest and dutiful towards his client, he cannot plead immunity. It has gone to the extent of saying that even if the advocate is considered as an officer of the Court, it does not obliterate his basic role of discharging service to his client.

Regarding the plea of the advocates that they were governed by the Bar Council, the High Court has said that the Bar Council cannot give effective redressal to the client by way of compensating him monetarily for the loss he would have sustained on account of a dishonest act and conscious breach of obligation on the notice of the advocates that if medical professionals, who are governed by the Medical Council of India, are brought under the CPA, there is no reason why advocates should be exempted. It has clearly stated that other rules and regulations framed to govern the conduct of advocates do not take them out of the CPA ambit.
